

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Justin Lynn Victory,

Plaintiff,

v.

C. LaRose,

Defendant.

Case No. 2:24-cv-00978-JAD-DJA

**Order
and
Report and Recommendation**

On December 23, 2024, the Court entered an order screening Plaintiff Justin Lynn Victory's amended complaint and dismissing it without prejudice. (ECF No. 25). In that order, the Court gave Plaintiff until January 22, 2025, to file an amended complaint if the noted deficiencies could be corrected. The Court informed Plaintiff that "[f]ailure to comply with this order will result in the recommended dismissal of this case." (*Id.*) (emphasis in original). To date, Plaintiff has not filed an amended complaint, or anything else, on the docket. So, the Court recommends dismissal of this case without prejudice. A dismissal without prejudice allows Plaintiff to refile a case with the Court, under a new case number.

Federal Rule of Civil Procedure 41(b) permits dismissal of an action for the failure to prosecute or comply with rules or a court order. Fed. R. Civ. P. 41(b). In considering whether to dismiss an action under Rule 41(b), courts consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions. *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1998).

Here, because Plaintiff has not complied with the Court's order or taken any action in this case since November of 2024, the Court recommends dismissal of Plaintiff's case without

1 prejudice. *See* Fed. R. Civ. P. 41(b); *see* LR¹ IA 11-8(e) (providing that the Court may, after
2 notice and an opportunity to be heard, impose any and all appropriate sanctions on a party who
3 fails to comply with any order); *see Pac. Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210
4 F.3d 1112, 1118 (9th Cir. 2000) (“an opportunity to be heard does not require an oral or
5 evidentiary hearing on the issue...[t]he opportunity to brief the issue fully satisfies due process
6 requirements”). The first factor weighs in favor of dismissal because the public has an interest in
7 expeditious resolution of litigation and Plaintiff’s failure to further participate in this lawsuit
8 impedes this goal. The second factor weighs in favor of dismissal because the Court’s need to
9 manage its docket is thwarted by Plaintiff’s failure to prosecute his own action and to comply
10 with this Court’s order. The third factor weighs in favor of dismissal because the longer this case
11 is carried on, the more difficult it will be for Defendants to defend against it because witnesses’
12 memories will fade and evidence may be lost. The fourth factor weighs in favor of Plaintiff, but
13 does not outweigh the other factors. Fifth, lesser sanctions are not available if Plaintiff will not
14 comply with Court orders. So, the Court recommends dismissing this case without prejudice.

15 16 **ORDER**

17 **IT IS ORDERED** that the Clerk of Court is kindly directed to send Plaintiff a copy of
18 this report and recommendation.

19 **RECOMMENDATION**

20 **IT IS RECOMMENDED** that this case be **dismissed without prejudice**.

21 22 **NOTICE**

23 Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be
24 in writing and filed with the Clerk of the Court within fourteen (14) days after service of this
25 Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has

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27 ¹ This refers to the Local Rules of Practice for the United States District Court, District of
28 Nevada, which can be found on the Court’s website at <https://www.nvd.uscourts.gov/court-information/rules-and-orders/>.

1 been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474
2 U.S. 140, 142 (1985) *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that
3 (1) failure to file objections within the specified time and (2) failure to properly address and brief
4 the objectionable issues could waive the right to appeal the District Court's order and/or appeal
5 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
6 1991); *see Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983); *see Miranda*
7 *v. Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012).

8
9 DATED: April 21, 2025



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE